JUSTICE.

> ". . . . Judges and officers shalt thou make thee in thy gates . . . . and they shall judge the people with just judgment. Execute ye judgment and righteousness, and deliver the spoiled out of the hand of the oppressor: and do no wrong, do no violence to the stranger, the fatherless nor the widow . . . ."

A PROCLAMATION, the firing of a few guns in salute, the hauling down of one flag, the raising of another, a few paragraphs, or at most a few columns in the newspapers very inadequately signalised to the world the most extraordinary event history has ever had to record; yet—busy people that we are—as notable and recent as is that event and notwithstanding we were the principal actors in it, you have to be reminded that I allude to the cession of Cuba to its people by our government!

That the probabilities are that it will not be long before that country applies for admission to the Union, and that a powerful commercial-political element here seems to be striving to hasten that consummation, should not lessen in the slightest degree the glory that attaches to the giving of such a precedent to the world. It *was* extraordinary magnanimity, inspired by the highest motives on the part of the administration and in accordance with the real desires of our people. The unworthy ulterior motives of the clique just referred to simply facilitated the performance of that act by estopping opposition to the President's carrying-out of the people's well-known wish. Above all else, however, it was a splendid example of national justice.

Note also that, too, in our treatment of the Chinese indemnity

matter and the Venezuelan affair we are striving to have other nations join us in rendering a higher quality of international justice than most of them are used to.

What surprises most people in all this is that as fond of advertising, as immodest as we are generally believed to be we are making so little noise about this new brand of Justice we are so mildly yet firmly endeavoring to have established as standard.

Strange how little understood that term, Justice, has always been, how misapplied, illogically conceived and wrongly administered it has remained through ages, even in the most advanced civilisation. That we seem to grasp some of the significance of the word and are willing, at times at least, to live up to its proper application justifies us in indulging in some self-gratulation, if nothing more. We will attend to that, however, in the privacy of our several closets. It is not my purpose to suggest or inaugurate any flapping of our national wings just now, but, if you will bear with me awhile I will endeavor to briefly review how Justice has been regarded, interpreted and administered before our day.

Such a glancing back need not be time wasted; it may assist us to a clearer appreciation of our manifold duties in the complicated administration of our growing interests and of our wonderfully diversified transactions with other peoples.

History and the splendid writings of antiquity reinforced by the sound logic of such moderns as Crazowski, Bishop, Schenider and particularly de Coulanges have made the task of compilation an easy one. If it be as interesting and instructive as it is earnest then am I well repaid, indeed, for the labor it involved.

Men have ever been prone to attempt to soar in the very heights of political organisation, even to rise to the clouds and misty reveries of waters humanitarian rather than to settle right down to the prosaic details of practical life; to create systems of government, to organise states, is so much more worthy of our genius than is it to bother with the trivialities of mere administration. Still, if we pause to really seriously think it over we must realise that there are some things even more precious than our political rights, for there are involved in this question of Justice, our well-being, our civil rights and liberty,

our property, our conscience, our very lives, all that constitutes our material and moral existence.

Of old Greece, Athens was the best governed city, the most prosperous and most intelligently organised. Whatever her faults we must admit that of all ancient republics her's was the least undemocratic. There were rich and poor but there was no privileged class or caste. No chiefs or judges were appointed; the entire city, all the people, established the laws, united in declaring war, in arranging treaties, in governing themselves. Every citizen was indeed a judge, a representative in Congress. The laws were administered by the people in jury assembled. Every year six thousand jurors were drawn and *all* sat in judgment all that year. There was no class of jurists or specially trained administrators. To be upon that jury one had to be over thirty years old and free from criminal indictment or judgment. The entire body sometimes sat upon the one case, but oftener they were divided into sections of two to five hundred, each section presided over by a member, a temporarily elected archon, and sitting in different parts of the city.

The people governed themselves and judged themselves. There could be no tyranny; the rights of all were guaranteed by all; each victim of a crime had the entire city behind him to punish the criminal; justice was absolutely gratuitous and was oftener invoked by the poor than by the rich.

Then, again, there is the reverse side to consider. None of these judges could well be deeply versed in law, nor could he have a very clear insight into human weaknesses or an intuitive appreciation of true and false testimony. Those things come only with years of training and study.

Such large bodies were easily carried away by specious, eloquent pleading, whatever the real merits of the case; intrigue was more easily practised in such a crowd than with a judge directly and solely responsible for his verdicts. A crowd becomes as a single individual when properly handled by a spell-binder; it is swayed by his every emotion; he can carry it to a certain point then even his control ends, the crowd becomes a frenzied, unreasoning mob. So it often was

with the Athenians. Would any judge or an intelligent jury have condemned Socrates?

Such a court is as wrong an organisation of Justice as is an absolute monarchy. The judge was the state; what chance had an individual whose rights clashed with those of the state, or who might be suspected of treason? Witness Demosthenes' second trial for instance.

We notice that all the Athenian pleadings laid great stress upon the poverty of the pleader. Punishment was generally meted out in fines, confiscations, rarely in a death sentence. The state throve upon fines, it was dangerous to be wealthy, for just think how necessary it was to insure funds sufficient to pay the six thousand judges.

That justice was pretty in theory, it had a fine flavor of democracy, but in application, exercised by the people, it necessarily was subordinate to the interests, the passions of the people. We find no sufficient guaranty in it to safeguard individual liberty, the rights of property, man's conscience, or even his life.

Roman justice has been the basis of that of most modern nations. It varied with the constitution of the state, but was never disassociated from politics. Its constant and fundamental principle was that it emanated from state authority and necessarily was part of and one with the latter. A judge, a magistrate, was always also an administrator, the *magister* was invariably the representative of the central authority, the chief, the arbiter and judge as well as the commander of the troops of his district. Call him prætor, consul, dictator or what you will, but in him was vested *all* authority. True there were prætors to whom was assigned the duty of judging, but they also commanded the troops, they constituted the *provincia urbana* but really were sub-consuls acting under the consuls who could at any time hold court themselves and set aside the verdicts of their subalterns. According to the Romans, law was by reason of authority alone; equity, reason and conscience counted for but little in the question.

There were also special officers called *judex* wrongly supposed by many to be judges. They were but "district-attorneys," they prepared state cases, took testimony, heard pleadings and reported to the

administrator who then passed judgment. Justice was necessarily subservient to public interest and reasons of state, hence the maxim, *salus populi suprema lex esto,* and from that old source are derived all the iniquitous laws of *lèse majesté* with which the old world has since been burdened. These laws were equally handy of application under the Republic and under the Empire. In either case it meant an absolute power, an arbitrary and often cruel one before which all personal rights were effaced. Now, all offences against those laws were tried before a consul, prætor or other officer of the state. Could there be a case in which the judge was not interested to the extent at least of upholding his own dignity, or, as chief of that particular community, the dignity of the state?

The ancients never seemed to recognise that republican despotism was as crushing as that of any other ruler. Under the latter it became tyranny; under the former people voluntarily submitted and called it liberty.

True there was an appeal from the consul's decision direct to the people, but those assemblies were presided over by that consul, and brave indeed was the individual who walked not on the line laid down by that officer. The right of appeal was really a dead letter. They tried to revive it at least seven times during a period of three centuries but only in the last two hundred years of the Republic was it really effective.

At times the people sat in judgment in a case direct, not an appeal, but such a court was convened by and presided over by the consul. It partook of the nature of a political gathering rather than a court of justice; witness the trials of Coriolanus, Claudius Pulcher and of Scipio Africanus; passion, hatred and party ruled.

In the latter years of the Republic there grew up an institution much resembling our jury system—in sound, at least. Tribunals of some thirty or more were chosen by ballot, they were presided over only by a questor or prætor, who merely read the sentence agreed to by the jurors. These sat for a year and were called *quæstiones perpetuæ.* Several such bodies sat at a time, one attended to crimes against the person, another to civil cases and so on, though it does

not appear that any of the jurors had previously received any training in the laws relating to the particular branch assigned him.

I said this system *sounded* well, it had the ring of true democracy, but in application it was the mightiest bulwark of the aristocracy. Rome, you remember, even as a republic never was frankly democratic. Athens was. In Rome when the patrician caste was weeded out, destroyed, there immediately sprang up an aristocracy of wealth. Apparently all men were equal politically and at law, but in fact classes divided off according to the ciphers of respective wealth. Men were elected to the senate from such a class only, to other offices from such and such classes. One had to be rich indeed to reach the higher offices—the suffrage of the people was expensive; the services were gratuitous but the pickings were tempting. A man could not vote unless he had a certain income. Representation was so juggled that the property-owners had thirty-one seats, in the Assembly the proletariat but four. All the offices were purchased. As a matter of fact the Senate became a close corporation, an hereditary office, controlled by the rich families, and to these fell all the honors, sacerdotal, martial and civil. It was from this senate that the lists of these juries we have noted were made up. They robbed the people and the magistrature of their authority and subserved the interests of this new oligarchy, becoming its strongest shield as well as most potent weapon of offence. Politics again ruled Justice.

The Republic really succumbed in consequence of the bitter strife between the classes as to who should compose these juries; the middle class demanded recognition upon them, not to give a better quality of justice but, mark you, on account of the pickings; the oligarchy haughtily refused to yield any of its rights; the former then aimed higher, even aspired to the senatorial toga, and civil war upset the whole order of things.

But justice remained as strongly bound to and controlled by politics as ever. The emperor was supreme judge, in fact the only judge. He delegated *legati* and *procuratores* to administer the laws, but it was in his name, according to his instructions and solely for his interests they were administered.

There were lawyers to assist, to defend the accused but the judge

paid as little attention to them as he did to their clients. He had other functions to attend to, military, social, etc., and wasted little time trying cases. The most important matters were expedited about as our police courts mete out justice and with about the same results; the accused was almost invariably fined. That made a quite important asset in the finances of the empire and added somewhat to the emoluments of the judges. There was an appeal, of course, but what did it amount to? From judge to the governor, then to the vice-prefect, to the prefect of prætorians and so on up. A costly proceeding and of little advantage. All their instructions were from the same source and the laws themselves were given by the emperors, mere whims often, in the form of *edictum rescriptum* or *responsum,* depending whether he "simply spoke, or wrote, or answered special questions." There was no law but the will of the ruler.

Naturally, under such a régime terrible abuses grew up. "Preventive detainer" was inaugurated, a man was imprisoned for fear he *might* commit crime. Such a procedure was absolutely unknown to the ancients. Bail under heavy bonds secured the "suspect's" release. Torture and "forceful inquiry" became potent factors in the administration of justice. Old Rome had permitted the torture of slaves; under the Empire it was applied freely to all classes, flagellation, "refined barbarities," confiscation of property, hard labor in the mines, slavery, were some of the *lesser* punishments inflicted upon the subjects of the mighty emperors. Confiscation was particularly in vogue, it added so to the imperial coffers. The number of slaves increased and they were not all taken from conquered peoples, neither property nor other rights were respected, agriculture languished, the trades were abandoned, public as well as private works ceased, and the Empire went the way of all despotisms.

Tacitus, some of the traditions of the Sagas, and a few old Germanic codes show us the condition of Justice and its administration, locally, nationally and internationally among the Germanic, Celtic and Frankish peoples of Europe, laws and customs that, naturally, left a powerful influence upon the successors to these peoples in feudal times and hence a strong impress upon us, their more or less

direct descendants. At first these laws were in the hands of a sacerdotal theocracy, then followed tribal rule. The evolution was slow, these people were phlegmatic, more stable than, albeit not so wise as, the Greeks and Romans. The latter period was necessarily one of interdependence. There were three classes, the nobles, the freedmen and the bondsmen or serfs. The nobles depended somewhat upon the king, the freedmen very much upon the nobles, and the serfs absolutely upon the others.

Mundium was the word: a lot of followers and serfs were attached to a noble, they formed a group, a family, and hence the present confusion and paucity of our names.

Some would have us believe these old peoples had no idea of property and its rights. They had a very well-defined one. The chief or lord, or head of the composite or real family, held all of the principality or section—later, counties—that is, all that was granted him by the king or that he could get by "conquest" from his neighbors. It was parcelled out to his followers on leases, some extending unto the fifth generation and some even in perpetuity, but mostly for short terms; indeed the farming lands changed hands nearly every year.

These families or groups grew in importance, they yielded scant fealty to the king, and increased their authority in their own domain. We see there the germ and soon the full flower of feudal institutions. There was "public justice," and also "private justice." Treason or cowardice on the part of the chief were about the only crime tried under the former in a court composed of all the chiefs about, merely presided over by the king who exercised the same authority over the court as does our vice-president over the senate. The sentence of the court was rendered by a priest and always executed by him—a relic of the ancient form of "justice in the name of the gods." "Private justice" covered or punished all other offences. The chief of the tribe was sole judge of and had the power of life and death over all his retainers and serfs. Inter-tribal disputes were never taken before the king, they were settled by arbitration or by blood and a family or tribe that could not manage its own affairs was soon absorbed by the stronger ones. This arbitration court, or *mall* as it

was called, was composed of a hundred sub-chiefs. They were as often called together by the offender as by the offended, they could not summon witnesses but merely tried to patch up the difficulty, or as a not always last resort, suggested a duel or even a battle. They frequently counselled an indemnity to be paid to the offended; particularly in the case of a murder they set a price that the murderer should pay the son of his victim or to the latter's chief, and when once that *Wehrgeld* was paid the matter was settled and the murderer could hold up his head as high as any one.

The Frankish kings attempted a sort of composite justice made up from the traditions of the old Roman Empire and the customs of their Germanic kinsmen. It read well, but its application, judged by the records and legislative documents of the time, was not a startling success. Charlemagne vainly endeavored to bring order out of chaos, his repeated exhortations to his nobles and officers to administer justice "justly" are really pathetic; they give us a clue to the brand of justice customarily meted out. For centuries no sort of law really obtained and justice was but a hazy memory. The individual had absolutely no rights but those he could defend by the sword. Society protected no one. Force became the law and the sword its sole administrator. Warfare was not the exclusive privilege of kings and the nobles; ecclesiastics, peasants, all classes of men warred among themselves and banded together against a common enemy; it was continual strife, pillage, murder and rapine and even the more sensible among men, yes the mighty (Saint) Louis of France himself, hardly dared express an adverse criticism of the habit, or attempt to stem the tide of bloodshed; it had become a fixed custom; a man entered into a bloody individual quarrel, or plunged a whole province into war, with as little or less hesitancy than one to-day instructs his lawyer to collect a bill "by any reasonable means."

For three hundred years force was the only law recognised by the individual as well as the nation. Individually we have fairly outgrown that idea, but as nations I do not see that the conditions have changed very much; we have an occasional "peace conference" and

all that sort of thing, but force remains a pretty potent factor in the settlement of international difficulties.

From the very beginning of the eleventh century men realised something was wrong. Life was not worth living, everybody and everything suffered, individuals and nations were going to rack and ruin, fields remained untilled, no manufacturing could safely go on, and famine was common. People rebelled *against* war, they clamored not for Justice, they had forgotten the word, but they did yearn for peace. The great revolutions of the twelfth century had but that one purpose! Nations were not establishing laws to govern their people; there was *no* public authority to rebel against; it was the individual begging and fighting for a law to be governed by. Societies with that end in view were organised, seemingly spontaneously, all over the civilised (?) world. They grew in importance and, little by little at least, private warfare fell out of fashion. It was forbidden the peasantry, then the middle classes and, by easy steps, the nobles. At first they were restricted only as to times when they could not fight, so many days a week had to be observed as "peace days," and it went hard with the princeling who infracted the rule; *all* the others were glad of the opportunity of joining in his punishment. Then a law was established that compelled the nobles to wait forty days between the dispute and actual hostilities. That gave them time to think it over and much trouble was thus averted.

Civil order grew apace, charters were respected, codes of law were established, the king became more potent, a central administration was possible and municipalities and courts were organised and magistrates took the place of the sword—among individuals; nations still glared at one another, the stronger brandishing their swords and shaking their plumes in the hope of intimidating the lesser ones, and these hatching up combinations that would enable them to glare back.

In affairs of any importance the magistrate or tribal chief, and in inter-communal matters the suzerain himself, sat as the president of the court, and the accused had the right to be judged by his "peers," four, six, ten or more men of exactly his own rank, and punctilious indeed was he in his "peremptory and privileged" challenges. The

presiding judge but rendered the verdict agreed upon by the peers. Strange it seems, too, that if that verdict was not to his liking the accused or the disgruntled litigant transferred his enmity from his opponent to the "peers" who did him the "injustice." Spite of the peaceful tendencies above noted, many bloody quarrels, real wars, were waged twixt litigant and jury as results of these trials.

Trouble between men of different ranks was tried before the peers of the *lesser* one. Vassals and serfs were still judged by their chiefs, but even they were often given the benefit of a jury of their fellows, and in any event they were not the abused class in that period we sometimes imagine them to have been; their condition was certainly superior to that of the peasantry of the seventeenth and eighteenth centuries. They were protected by certain laws, unwritten ones, but "customs that obtained among gentlemen in the treatment of their people" that were religiously observed and jealously guarded. The chief held court (without power of inflicting death) always at the same spot, under some particular tree or arbor in the great court of the castle, hence the term "court." It was a place of sanctuary, accused and witnesses had the right to say *anything* there without its prejudicing against them later, and once a man claimed it as asylum no enemy, or even the master, could do him harm until after he had been judged.

In the cities the mayor and aldermen (the old men and principal ones of the place) held court and tried minor cases. While the aldermen debated after the evidence was all in, the mayor retired so as not to "intimidate their decision." The chiefs levied fines that reverted to themselves, and imprisoned evil-doers in their "dungeons"; the cities turned their fines into the municipal treasury and maintained (usually well filled) great city prisons. Village justice was administered either by a mayor and his council or by a provost or deputy, subject to the lord of that particular feudality. Still these courts were not altogether dependent upon the will of the lord, the jury of peers obtained there, too, and the old records show us some strange findings that indicate indeed that the lord often came out of the small end when such courts adjudicated disputes between him and his tenants.

The quality of this justice was simple, rugged, yet eminently more logical and just than could often be obtained under the involved laws of later date that were framed, one would think, for the express purpose of allowing lawyers to quibble. The people were well balanced, simple if you wish, but society, nevertheless, was fairly well constituted. Every one was tired of the warfare and the never-ending quarrels of his predecessors. Under other conditions such a system of justice would have miscarried and been the handmaiden to conflict and disorder. The thirteenth century was notable for the calm that reigned all about. It was ominous.

For with the fourteenth century there came troublous times; strife in the state, in the church, in the community, between sects, between countries, aye and between members of the one family. Kings grew over-ambitious and classes first mistrusted each other, then mistrust turned to implacable hatred. The "plain people" lost their hold upon the administration of justice; village courts were abolished; the jurisdiction of municipal courts was cut down; kings and princes grew more and more despotic and the people more and more rebellious.

I trust this leafing over of the musty old tomes of the past has not been too wearisome to you: I lay particular stress upon it, for the older I grow the more impressed am I with the influence that that past exercises over us in absolutely everything we do. Our government, our politics, our faith, our mode of life, are based upon *how* we have *read* that past. Differences of opinion even about matters of to-day, and trivial ones, may be traced to the prejudice, inspired by that past, with which we observe things and forecast their results. Does such a man believe in the Divine rights of kings? Depend upon it he has not only an hereditary bent that way, but his reading of history and natural admiration for the grandeur and valor of this or that mighty ruler of the past, have much to do with his opinion whatever may be his environment. Is such another rabidly democratic? That too is an hereditary trait handed down through generations from the time some poor wretch was cruelly wronged by a "noble" feudal baron; but mark you, he has read of and been impressed, stirred-up by the cruelty of kings and has absorbed advanced

notions anent the rights of the down-trodden people and all that sort of thing in his early youth and reading. And that prejudice seizes hold of us in our very childhood, our first books are responsible for it and the efforts of a lifetime are not sufficient to eradicate it. True, the old régime does not govern us, but the idea we have of it dominates and governs each one of us.

The trouble is that our knowledge of that past is so very imperfect, and, indeed, generally derived from romantic fiction. Each one fashions to himself an imaginary past. Do you ever find two men with the same notion of any detail of history? There are so many different ways of mistaking history, and each one of us models his political credo about the errors to which he has given his preference or to which he is chained by his early education. We have about as many political parties and subdivisions in the world to-day as there were different school histories in our youth. A famous German scholar tells me he would gladly give up ten years of his life could he but forget, or at least get away from, the influence of what he read before he was fourteen!

Scientific, exact and as unprejudiced a study as we can give history is of the greatest value to society. Would that we had time to look into this question of justice, as it was dealt with in the past with leisure and thoroughness. We are striving to establish universal peace, equity among nations and men, let us first try and weed out our prejudices and errors regarding the past. It is time well spent. History wrongly interpreted keeps us divided; it is by a more intimate knowledge of it, a clearer appreciation of its details and keener insight into and comparison of the old time systems of justice that we may hope to begin the work of conciliation, of unifying our views, of ennobling our common purposes, and of finally establishing that peace that at present does certainly seem to be far beyond our understanding.

But let us back to the middle ages, they are of particular interest to us, for, with a change of name, some slight variation and an injection of new as well as of very old ideas, their laws, their notions of justice are still doing duty for us.

We noted the advance of monarchical supremacy in the fifteenth

century. Kings were ambitious, yes, but the people contributed to the overthrow of their "cherished" rights, they *abdicated* them. Liberty is always a burden; to govern one's self is tiresome and only the most energetic of peoples make a success of it; to be one's own judge is positively unbearably irksome. It was not only the men of *those* days who shirked jury duty; the excuses we read of, given to evade that task, have a strangely familiar sound to us. It meant time lost to business or pleasure, annoyance, responsibility and often —in those days, not now—a fight. So difficult was it to get a jury that frequently but four men sat and upon most important cases, indeed we have record of only one man being selected to try a case involving life.

A suzerain was supposed to call all his vassals to sit at certain assizes. They were pretty independent of him, however, and those who did not ignore the summons "begged off" very formally, being certain they would be excused, or paid their fine for non-attendance as nonchalantly as does the automobilist for fast riding, so that the king could but depend upon his lesser vassals, the weaker ones, those absolutely under his thumb and anxious to do his beck. One of the most famous trials in feudal England was tried before but *three* peers, two of whom fell in mortal combat waged with the unsuccessful plaintiff, who, later was crippled for life by the third. Jury duty had its dangers as well as discomforts in those days. It was so much easier (and safer) to have those things attended to by others, and the kings were not slow in availing themselves of the opportunity to attend to *all* the dispensing of justice. Still it is a mistake to say that trial by one's peers was *wrested* from the people by violence or ruse.

Naturally the kings and suzerain chiefs could not, or would not attend to all the petty disputes and legal quibbles. We have but scant notion of the mass of litigation and prosecution carried on; there were crimes innumerable besides those we punish to-day, sorcery, "blasphemy of relics," and what not, and in civil matters barons and common folk alike seemed to walk about with the proverbial chip on the shoulder. They were far more litigious than we are and, Heaven knows, that is bad enough. Those kingly duties were

deputised, men studied the laws, precedents and procedures, they became adepts at questioning, extracting evidence by the rack and other effective means. Légistes, procurators, assizors, deputy judges they were called. Their's became a science, a profession, the application of the old Roman code a fine art.

The clergy, with ample time for study, and a boundless ambition to satisfy, were particularly adept, for, forsooth, the law could be turned to good advantage, and they became great jurists. Archbishop This and Prior That, princes of the church and common monks sat upon the benches and bent every energy toward getting all others off, but among their number there were barons and titled judges, so that even the upper classes still deluded themselves with the idea they were being tried by their peers. To all intents, for a time at least, all courts of justice of Europe were ecclesiastical, though the kings and Rome itself sought to curb this holy zeal.

Whatever their formation the transition of these courts from the old trial by peers was an easy one, not particularly slow but without shock. How unconscious we are of absolute changes, complete revolutions, when they do not come as sudden surprises! Contemporaneous writers chronicle these changes but without comment; they apprehended not the effects of what was going on. It upset the entire social structure, the conditions, the politics, the religion of the Middle Ages and of all succeeding times.

Monarchical rights were wonderfully enlarged through the unconscious intermediary of these courts, and feudality received its death blow through their unintended instrumentality. Under the old régime a man either obeyed the verdict of his peers in judgment assembled, or fought those peers and defied all hands to enforce the sentence; under the new dispensation appeal was the order. No one thought of fighting a book-worm, a priest, a grave and ancient judge, as most of the judges were, so he went from petty court up to the seignorial tribunal, from it to king's court, and from the latter to the ruler himself. The dukes and barons maintained great armies; the kings had few troops, but they governed by force withal, *through* the courts; they reigned by virtue of the law which they manipulated and enforced by playing one feudal lord and his troops,

his wealth and his ambition, against the other, and wound up by the destroying or absorbing the power of both.

This magistrature, incipient, subordinate, the plaything of kings at first, grew in independence apace with its importance. Early in the thirteenth century terms of office were insecure and short at best, depending solely upon the good will of the crown; then they became life offices. Kings, always more or less pressed for funds, sold the appointments and collected rentals during their continuation. These offices actually became hereditary (again history repeated itself) transmitted from father to son, and were "as hot coals unto the fingers of royalty" to such an extent that the latter voluntarily gave up the appointive power and made them elective by the privy councils and "parliaments" (of which these judges formed part). Men spent fortunes in influencing, buying these elections and justice became a veritable monopoly. It is passing strange, too, that the justice administered under such conditions was of pretty fair quality. Men sought the office for the power and the glory; there were no salaries attached to these high offices, but the emoluments were considerable, the fees levied upon litigants were many and all reverted to the courts. The judges had large retinues, bailiffs, clerks, readers, expounders, mace-bearers, criers, and so on, and all had their pickings from off the litigiously inclined—who seemed to thrive under and enjoy the operation. Have things changed since then so very much?

Venality crept in little by little, however, dishonest judges were not the exception, in fact those who were above suspicion were looked upon as heroes. Henry IV. of France declared that all his courts were corrupt. He said he *knew* for he had purchased verdicts in *every* one of them. Hand in hand with venality came ignorance. Judges as well as "pleaders" (lawyers) still passed through the farce of an examination before taking their places, but their ignorance of the first principles of equity as well as of law was sometimes monumental. The world has not yet gotten over the tangles and evil precedents bequeathed it by that judiciary. And these conditions obtained for full three hundred years. Worst of all, the magistrates not only administered the laws but very largely enacted them,

originated them. As constituted in the thirteenth century the magistrature was the origin, the grandparent of the senates of to-day. Kings devised laws, but they were inoperative until passed upon by those courts or "parliaments"; they really exercised the right of veto. James I. swore his courts were "a sort of republic in an alleged monarchy whose ruler danced to its tune."

Still the courts were loyal, they were never adversaries to the crown, they simply opposed it when its wearer overstepped certain bounds, they jealously insisted upon its attending to its own business, which no longer was the administration of justice. At the same time this judiciary became the "defender of the people's rights," however royalist its tendencies.

As if by very reason of its conception, in very disgust, it purged itself thereof—those things do happen you know—and as it became purer so grew its power. To the judiciary of that time belongs the honor of inspiring, devising a constitutional monarchy from which sprang the idea of its being a co-ordinate branch of government in monarchical as well as republican forms. It kept kings straight, people satisfied, and despite the sins of its youth that judiciary of the fifteenth century, corrupt, venal, purchasable and purchased as it was, has given us the firmest bulwark society has to-day.

For centuries did kings seek to minimise that authority that thwarted their schemes and anchored them in quiet waters, but without success. Yet each was dependent upon the other. Once—in France—did the judiciary attempt a revolution, a rebellion against the king. It lacked material force, so had to ally itself with the nobles or with the "masses"; in either company was it most ill at ease, and it was but a little while before it went back into the royal fold and redoubled its devotion to that cause. It could neither brook an absolute monarchism or stand without a king.

The old judiciary waged a constant warfare upon the excesses of that absolutism, the men who sat upon its benches were living synonyms for "liberal conservatism"; but then, excesses are as common to other forms of government, even republican; moderation and discretion are no more inherent in the one than in the other. There have been times, even in our day, when the conservative in-

fluence of a judiciary was all that saved a nation from ruin. The interests of a day, the caprice of a man, influence legislation that unless counteracted by the conservative rulings of a wise court of review—based upon a written constitution that has withstood the shock and storms of years—might work incalculable and irremediable injury upon the entire nation.

Of all the nations of to-day our's stands the most in need of preserving intact the integrity, the freedom from party and other influence of not only its supreme court, but also of its state and petty courts.

The greatest danger that threatens the judiciary, and through it the nation, is our tendency toward—aristocracy. A strange word to use in connection with a democratic form of government, is it not? But republic and democracy are not necessarily two correlative terms. That they are is what has been preached for years, though history shows us the fallacy of the claim. There is no nobler form of government than a republic, yet it is the most propitious formation for the founding of an aristocracy that ever existed. It is so essentially aristocratic in its ultimate tendency that wherever a democracy has established a republic, that government has invariably, sooner or later, either resolved itself into a severely exclusive oligarchy or else it has been overthrown by the people who replaced it with—of all things!—a monarchy.

We saw that tendency in the South before the Rebellion, there was an unmistakably aristocratic flavor about its politics, its society; the simpler habits, the sturdier stock and puritanical training of the men of the North counteracted that element and a democratic Republic was preserved. But for how long?

Remember, rather should we watch and pray and keep our loins ready girded for the fray than to sit idly by, indulging the while in ostentatious vauntings. We may feel that we are founded upon a rock and laugh at the precedents, the falls of other nations that have gone on before, but, I tell you, a thinking man shudders when he notes some of the tendencies of the times. We are strong, yes, but is our brief span of scant a century and a quarter of national existence a criterion, a sufficient guarantee, that we shall go on thus in

contravention of what seems to have been the invariable, the immutable order of things, as we know them to have been for at least thirty times the duration of that period?

There are essentials to our continued and true democracy: equal suffrage and representation; absolute separation of government, law and religion; regular times when the people (I mean the people, not so-called conventions) have an opportunity to completely change the personnel of their representatives in government; and a most jealous guardianship of the Constitution, particularly wherein it limits official powers.

Our judiciary generally is composed of high-minded, noble men, still we observe with regret, if not with positive fear, the infusion therein of a party spirit. Even our Supreme Court is expected to divide upon strictly party lines upon all great questions submitted to it. That is a relic of olden times we might well lay aside. The judiciary should be a class by itself, unhampered by obligations to appointive powers, forgetful of previous affiliations and unprejudiced by party desires or necessities, then would there be perfect justice and equity.

If we can but preserve our judiciary as it is, however, we ought to be well pleased, our every effort at reform is needed far more in other directions. Our municipalities need, nearly every one of them, a moral as well as physical cleansing. If our federal and state governments were administered as are most of our little as well as great cities the nation would go to the dogs in a generation's time. (It is a peculiar coincidence at least, that in our only really well-governed city, Washington, there is never an election, all offices are appointive and the people have no voice in any branch of its administration, yet they are happier, freer, better protected, and have more privileges and rights than the citizens of any other municipality.)

The trouble is, like in the Middle Ages in the matter of judgment by peers (preserved, by the way, intact by the peers of England) we do not care to bother with details; the men of those times were willing that judges should relieve them of irksome duties; we are willing that those who make a business and traffic of politics should do our voting and necessarily our governing, and that the riff-

raff of society should sit upon our juries. Then we wonder at the verdicts rendered and at the calibre of the men who sit in solemn council squandering our money and granting suicidal franchises. What opposition do we offer to the ambitions of such men, and do not many of them, creep up or boldly walk into still higher places, in state and federal offices?

There *are* dangers lurking about, there *is* a possibility of history repeating itself. We are too lazy or too busy to give more than a passing thought or moment to our government, let alone justice and our laws. We are perfectly satisfied to let things go and we dread anything like reform, or change or experiment. Experiment! Ah, that is the word most of us balk at. All reforms are branded "experiments" and our good people hold up their hands in horror. For instance, some of us are advocating the Bérenger method of treating first offences being adopted in this country (Senator Bérenger, of France, has been laughed at for years because he succeeded ten years ago in passing a law that every first offence, not involving over two years' imprisonment, should have that penalty suspended and ultimately remitted, provided the offender commits no misdemeanor during the subsequent five years). We are laughed at, called dreamers, assured that we are suggesting dangerous experiments and what not, yet there are the records to show that the percentage of second offences in France has been reduced—by that law—from 46 to 5.4! But we should not speak of it for it's only an — — — — experiment.

We can afford to experiment along these lines. Mercy is an accompaniment to Justice. We should clear our minds of the fog that shrouds the justice, the methods of the past, that we may correctly appreciate the effects of those methods and be guided thereby in our experiments of the future. The past may indicate to us what cannot, should not be done. The great questions of the future that confront us are social questions. The alleged statesmen of Europe are afraid of seeing them settled; some of their antics in the endeavor to keep them unsettled are positively grotesquely amusing if they were not so pitifully effective. They keep the people, the parliaments, the cabinets discussing such petty themes. Here, on the contrary, all is so vast! And the eyes of the world are upon us.

Our natural tendencies are toward a true democracy, the air we breathe is that of Freedom. Justice must accompany Freedom, and with Justice, Equity.

We must recognise that there is an equity superior to social power, that there are rights of individuals that cannot be judged by the State and that conscience never can.

Let us cultivate that spirit of regard for conscience, let us follow its dictates; they will not lead us astray. We may centre all our efforts upon our individual selves, they will not be wasted, nor will we be deemed selfish. Let each man be just unto his neighbor and peaceful, and you will observe how very quickly the municipality, the State, the Nation, the World is infected with that holy contagion.

> . . . "The fruit of righteousness is
> sown in peace of those who make peace . . ."

WASHINGTON, D. C. F. W. FITZPATRICK.